

Final Order Denying Refund Number: 04-20180812R
Sales/Use Tax
For The 2017 Tax Year

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Because Individual purchased a vehicle without paying sales tax, the Indiana Bureau of Motor Vehicles properly collected use tax when Individual titled his vehicle. Individual failed to demonstrate that he overpaid the sales/use tax; therefore, he was not entitled to a refund of the Indiana tax on his vehicle.

ISSUE

I. Sales and Use Tax - Refund.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-4-1; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-2.5-13-1; IC § 6-8.1-9-1; *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466 (Ind. Tax. Ct. 1993); *Scopelito v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-14](#); [45 IAC 2.2-5-3](#); [45 IAC 2.2-5-6](#); [45 IAC 2.2-5-8](#); [45 IAC 2.2-5-9](#); [45 IAC 2.2-5-10](#); [45 IAC 15-9-2](#); Commissioner's Directive 13 (June 2012).

Taxpayer protests the refund denial of tax which was collected at the time he titled the vehicle at the Indiana Bureau of Motor Vehicles.

STATEMENT OF FACTS

Taxpayer is an individual who resides in Indiana. In December 2017, Taxpayer went to a branch office of the Indiana Bureau of Motor Vehicles ("BMV") to title a vehicle he had purchased. The BMV charged Taxpayer a \$15 fee for "Title Transfer" and also collected Sales/Use Tax, in the amount of \$700, at that transaction. Taxpayer paid \$715 as a result.

Subsequently, Taxpayer filed a GA-110L Form (Claim for Refund) with the Indiana Department of Revenue ("Department"). Taxpayer stated that he was entitled to a refund of \$700 (Claim Number 1667933).

The Department reviewed Taxpayer's refund claim and, on February 1, 2018, requested that Taxpayer provide "documentation as to where the sales tax was paid." Taxpayer did not respond to the Department's request. Ultimately, the Department denied Taxpayer's refund claim.

Taxpayer protested the refund denial. Taxpayer asked that the Department make the decision based on the documentation he submitted without an administrative hearing. This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales and Use Tax - Refund.

DISCUSSION

Upon initial review of Taxpayer's refund claim, the Department requested that Taxpayer provide "documentation as to where the sales tax was paid." Taxpayer did not respond to the Department's request. The Department thus denied Taxpayer's refund claim in full because Taxpayer failed to support his refund claim. The Department, in a February 28, 2018, letter, explained that:

The claim for refund did not include information necessary for the Department to verify the claim. We contacted you February 1, 2018[,] advising that additional supporting documentation must be received by this office within twenty (20) days. We did not receive the additional documentation necessary to process the claim.

Taxpayer, to the contrary, stated that he is entitled to the full refund.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund, which, in relevant part, provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. . . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax . . . is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

[45 IAC 15-9-2](#) further explains, in relevant part, that:

(b) The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to [IC 6-8.1-9-1](#).

(d) When filing a claim for refund with the department the taxpayer's claim shall set forth:

- (1) the amount of refund claimed;
- (2) **a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;**
- (3) **the tax period for which the overpayment is claimed; and**
- (4) **the year and date the overpayment was made.**

The claim for refund shall be filed on a form prescribed by the department.

(Emphasis added).

Thus, when a taxpayer determines he overpaid sales or use tax, the taxpayer must file a GA-110L form as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a); [45 IAC 15-9-2](#); Commissioner's Directive 13 (June 2012), 20120530 Ind. Reg. 045120241NRA. The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2](#).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana, which includes sales of motor vehicles. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible person property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). A retail sale is sourced to Indiana and therefore is subject to Indiana sales tax when the transaction is a "retail sale . . . of a product" and "the product is received by the purchaser at a business location of the seller [in Indiana] . . ." IC § 6-2.5-13-1(d)(1). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.* "The retail merchant shall collect the tax as agent for the state." *Id.*

When a purchaser claims the purchase "is exempt from the state gross retail [] tax[], [the purchaser] may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). The "seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail [] tax on that purchase." *Id.* Otherwise, as an agent for the State of Indiana, the seller "holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state[.]" IC § 6-2.5-9-3.

The Indiana use tax is imposed "on the storage, use, or consumption of a vehicle . . . if the vehicle . . . (1) is acquired in a transaction that is an isolated or occasional sale; and (2) is required to be titled, licensed, or registered by this state for use in Indiana." IC § 6-2.5-3-2 (b). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is generally functionally equivalent to the sales tax. See *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Rhoads*, 774 N.E.2d at 1048; *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 468-69 (Ind. Tax. Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. *Rhoads*, 774 N.E.2d at 1050. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. IC § 6-2.5-3-2(a); *USAir, Inc.*, 623 N.E.2d at 468 - 69. A taxable retail transaction occurs when (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b) and (c); IC § 6-2.5-3-2(a).

Accordingly, all purchases of tangible personal property are taxable unless specifically exempted under Indiana law. [45 IAC 2.2-5-3\(b\)](#); [45 IAC 2.2-5-6\(a\)](#); [45 IAC 2.2-5-8\(a\)](#); [45 IAC 2.2-5-9\(a\)](#); [45 IAC 2.2-5-10\(a\)](#). An exemption from the use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4 and [45 IAC 2.2-3-4](#). See also [45 IAC 2.2-3-14\(1\)](#). There are various tax exemptions available outlined in [IC 6-2.5-5](#) which are applicable to both sales tax and use tax. [45 IAC 2.2-3-14\(2\)](#). A statute which provides a tax exemption, however, is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). When a taxpayer challenges the taxability, the taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Revenue*, 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

Taxpayer in this instance asserted that he is entitled to a full refund because he paid the \$700 tax at the BMV. Taxpayer stated that "I did submit the required information on 2/15/2017. I have enclosed copy of supporting Documents, and original refund claim." Taxpayer however simply resubmitted the same copy of the "BMV Customer Transaction Receipt" on that December 2017 transaction to support his protest.

Upon review, however, Taxpayer is mistaken. Specifically, in this case, Taxpayer titled the vehicle at the BMV—presumably, Taxpayer now uses the vehicle in Indiana. Thus, the purchase and use of the vehicle in Indiana is subject to Indiana sales/use tax. The "BMV Customer Transaction Receipt" stated that the "Sales/Use Tax" on the transfer of that vehicle was "\$700." The "BMV Customer Transaction Receipt" also stated that the "Credit Applied" to the tax was "\$0." In other words, when Taxpayer went to the BMV to title his vehicle in December 2017, he did not provide documentation to substantiate that the sales tax was already paid. Without evidence showing prior payment of the sales tax, the BMV could not apply any tax credit to reduce Taxpayer's Indiana use tax liability. Since Taxpayer has not presented evidence the sales tax was paid at the time of the purchase, the use tax was properly imposed at the time when Taxpayer titled his vehicle at the BMV pursuant to IC § 6-2.5-3-2(b).

Additionally, Taxpayer is required to explain the basis of his refund claim pursuant to the above-mentioned statutory and regulatory requirements. For example, if Taxpayer claims that he overpaid the tax because he paid the sales tax when he purchased the vehicle in question at the dealership, then he is required to provide the documentation to show that the sales tax was paid previously. His payment of sales tax will be considered as tax credit to reduce his Indiana use tax. Alternatively, if Taxpayer claims that his purchase and use of the vehicle qualifies for an exemption outlined in [IC 6-2.5-5](#), he is required to provide additional supporting documentation to demonstrate the exempt use accordingly. But, Taxpayer provided neither.

In short, given the totality of the circumstances, in the absence of other supporting documentation, Taxpayer was

not entitled to the refund because he failed to demonstrate that he overpaid the Indiana sales/use tax.

FINDING

Taxpayer's protest is denied.

March 28, 2018

Posted: 05/30/2018 by Legislative Services Agency

An [html](#) version of this document.